Filed 4/4/19 Dalessandro v. Mitchell CA2/8

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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| JAMES DALESSANDRO,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>ERIC ALBERT MITCHELL,<br><br>Defendant and Appellant. | B286501<br><br>(Los Angeles County Super. Ct. No. BS138171) |

APPEAL from a judgment of the Superior Court of Los Angeles County. Edward Moreton, Jr., Judge. Affirmed.

D. Joshua Staub for Defendant and Appellant.

Law Offices of Paul Levine and Paul S. Levine for Plaintiff and Respondent.

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This appeal stems from a collateral attack on a judgment issued in 2014. In 2016, the judgment was amended to add Eric Albert Mitchell as a judgment debtor. Mitchell contends the original judgment is void, and by extension, the amended judgment against him is also void, because service of process was not valid against the original defendants. We disagree and affirm the judgment.

## PROCEDURAL BACKGROUND

On July 10, 2012, the Writers Guild of America West, Inc. (Writers Guild) filed a petition to confirm a contractual arbitration award. The petition alleged that Citizen Jane Productions, LLC, and Cibola Entertainment, LLC (the LLCs) were subject to a collective bargaining agreement, which compelled arbitration of certain disputes. The petition further alleged the LLCs failed to pay a writer residual compensation for the reuse of a motion picture on various television platforms. The parties stipulated to an award in the amount of $52,277.21.

As part of the award, the parties stipulated that "[t]he award may be confirmed in any court of competent jurisdiction, as provided above, and any and all notices in connection therewith may be served on Respondents by regular first class mail and/or email to Martin Barab, Hamrick & Evans LLP, 111 Universal Hollywood Drive Suite 2200, Universal City, California 91608 . . . ." The record shows a summons and the petition to confirm were personally served on "Marty Barab" at the Universal City address on October 11, 2012. The summons and petition were also served by mail on the agents for service of process for the LLCs.

The trial court confirmed the arbitration award and a judgment against the LLCs was issued in favor of the Writers Guild on March 22, 2013.

The Writers Guild subsequently assigned its rights to the judgment to James Dalessandro, who was the writer on the project. In 2014, Dalessandro moved to amend the judgment to include Mitchell as a judgment debtor, alleging he is an alter ego or managing member of the LLCs. The motion was denied without prejudice based on a finding of insufficient evidence.

Dalessandro again moved to amend the judgment to add Mitchell in 2016. Substitute service of the motion to amend was effected on Mitchell's brother at an address in West Hollywood in February 2016. The court granted the motion and found service was proper as to Mitchell, but not as to another member of the LLCs.

Mitchell did not appear or otherwise oppose the motion at a June 10, 2016 hearing. Mitchell did, however, object to a proposed order on the judgment after he received it. Mitchell acknowledged in a June 16, 2016 correspondence with Dalessandro's attorney that he learned of the motion to amend when his brother informed him he had received mail from Dalessandro's attorney.

An order amending the judgment, which included Mitchell as a judgment debtor, was issued on July 5, 2016. Mitchell thereafter moved to vacate or set aside the amended judgment. By order dated July 6, 2017, the trial court denied the motion to set aside without prejudice. In addition, it granted Mitchell's motion to strike or tax costs, finding Dalessandro failed to justify the attorney fees and costs he sought. The court ordered Dalessandro and his attorney to pay reasonable attorney fees and

costs to Mitchell in the amount of $4,399 pursuant to Code of Civil Procedure section 128.5.[1]

Mitchell filed a second motion to vacate or set aside the judgment, asserting the LLCs were not properly served with the summons and petition and that he was not properly served with the motion to amend. The trial court denied the motion to vacate, finding the petition was properly served pursuant to the terms of the parties' agreement, which constituted a knowing and voluntary waiver of the statutory service requirements. The trial court awarded Dalessandro attorney fees. Mitchell timely appealed.[2]

## DISCUSSION

On appeal, Mitchell contends the initial judgment is facially void because the summons and petition were not properly served on the LLCs. By extension, Mitchell asserts the amended judgment is void. We are not persuaded.

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

Section 128.5, subdivision (a), permits a trial court to "order a party, the party's attorney, or both, to pay the reasonable expenses, including attorney's fees, incurred by another party as a result of actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay." (§ 128.5, subd. (a).) This sanctions order is the subject of a separate appeal filed by Dalessandro in case No. B289365.

[2] During the pendency of this appeal, Dalessandro moved to dismiss Mitchell's appeal based on the disentitlement doctrine for Mitchell's failure to appear for a judgment debtor examination or respond to a demand for discovery of his financial information. That motion is denied.

The record is clear the parties stipulated in the arbitration award that all notices in connection with the confirmation were to be served on Martin Barab, the attorney who represented the LLCs during the arbitration proceedings. The Writers Guild complied with this notice requirement by personally serving the summons, complaint, and related materials on Martin Barab at the specified address. That is sufficient service of process under these circumstances.

Mitchell attempts to avoid the terms of the arbitration award in several ways. He contends, despite the arbitration award, that the Writers Guild was still required to comply with statutory mandates regarding service of process as set out in the arbitration agreement. Further, that even if the terms of the arbitration award were effective, they were not complied with. Last, he claims that Barab, who was listed as the agent for service of process in the stipulation, was not appropriately designated because there is no showing he agreed to accept service of process and never signed the stipulation. We reject each of these arguments.

Turning to Mitchell's first contention, we look to section 1290.4, subdivision (a), which governs the service of summons and petition to confirm an arbitration award. Section 1290.4, subdivision (a), directs that a copy of the petition shall be served in the manner provided in the arbitration agreement. Here, the arbitration agreement provides for service on the respondent by registered or certified mail or by personal delivery. If service cannot be effected in this way, the agreement provides for publication in four designated newspapers. Arguably, the Writers Guild substantially complied with the statutory

provisions in that the summons and petition were served on the agents for service of process for the LLCs by mail.

Nevertheless, Mitchell contends this is insufficient to comply with the arbitration agreement because service was not accomplished by certified or registered mail. Even assuming he is correct, the constitutional and statutory requirements for service of a summons exist for a defendant's protection and therefore may be waived. (Weil & Brown, Civil Procedure Before Trial (Rutter Group 2018) § 4:50; see *D.H. Overmyer Co. v. Frick Co.* (1972) 405 U.S. 174, 189; *Rifkind & Sterling, Inc. v. Rifkind* (1994) 28 Cal.App.4th 1282, 1290–1291; *Fireman's Fund Ins. Co. v. Sparks Construction, Inc.* (2004) 114 Cal.App.4th 1135, 1147–1148.)

Here, the trial court properly found the statutory requirements for service under section 1290.4, subdivision (a), were so waived and replaced with the provisions specified in the stipulation in the arbitration award. As we have noted, that stipulation in the award provided that ". . . any and all notices in connection [with the arbitration award] may be served on Respondents by regular first class mail and/or email to Martin Barab, Hamrick & Evans LLP, 111 Universal Hollywood Drive Suite 2200, Universal City, California 91608 . . . ." Indisputably, this service requirement was met.

To avoid this conclusion, Mitchell asserts the arbitration award stipulation does not fulfill the formal requirements for service of process, only for "notice" of superior court actions. In support of this contention, he relies on *Abers v. Rohrs* (2013) 217 Cal.App.4th 1199 (*Abers)* and *Honda Motor Co. v. Superior Court* (1992) 10 Cal.App.4th 1043 (*Honda*). His reliance is misplaced.

In *Abers*, the petitioners sought to vacate an arbitration award issued in favor of their landlords. They served the petition to vacate under a provision in their leases which provided " 'written notice[s] . . . respecting this Lease' may be 'sent by certified or registered mail' to a specified address." (*Abers, supra*, 217 Cal.App.4th at p. 1206.) The court held "notice" of the petition to vacate was insufficient to confer jurisdiction over the respondent landlords because notice is not the same as service of process. The court found the lease provisions on notice "say nothing about the manner in which a party may be *served with process* in connection with a petition to vacate an arbitration award, to establish the court's personal jurisdiction over the party. Merely providing a party with notice that a petition has been filed does not establish personal jurisdiction." (*Id.* at p. 1203.)

*Abers* does not help Mitchell because the notice provision in that case is readily distinguishable from the notice provision here, which expressly tells the parties the way the LLCs may be served with a confirmation of the arbitration award. *Abers* does not stand for the proposition that a party may never waive statutory service of process requirements, it instead found that the parties in that case did not do so. As we have shown, that is not the case here.

Even less helpful to the Mitchell is *Honda*. Indeed, *Honda* has nothing to do with a party's voluntary waiver of the service of process requirements under California law or of the difference between providing notice and service of process. Instead, it holds that a California court may not dispense with the requirements of service on foreign nationals under The Hague Convention simply because it is undisputed the foreign entity received notice

of the summons and complaint. (*Honda, supra,* 10 Cal.App.4th at p. 1049.)

In short, Mitchell has failed to set forth sufficient legal authority to override what the LLCs agreed to in the arbitration award. The trial court properly acquired jurisdiction over the LLCs and the resulting judgment is valid and enforceable.

In a last-ditch effort to save his case, Mitchell contends the stipulation's designation of Barab as the agent for the LLCs is improper because Barab failed to sign the stipulation. Thus, Mitchell contends, there is no evidence Barab agreed to be the agent for service of process for the LLCs. This argument is meritless. There is no contention that the LLCs did not participate in and sign the stipulation which designated Barab to receive notice of a petition to confirm the arbitration award. In fact, Barab was the attorney who represented the LLCs in the arbitration. It is not incumbent on the Writers Guild or any third party to ascertain the precise relationship between the LLCs and Barab. Further, Mitchell has cited to no legal authority which requires the Writers Guild or Dalessandro to do so.[3]

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[3] Mitchell's contention that the proof of service is defective because it incorrectly indicated it was serving Barab "as an individual defendant" also lacks merit. It is well-established that only substantial compliance is required to render the service of summons upon an entity-defendant effective. Slight defects may be overlooked if the entity-defendant must reasonably have known that the summons or petition was directed to it. (See *Cory v. Crocker National Bank* (1981) 123 Cal.App.3d 665, 669 (*Cory*) [corporate office reasonably knew he was not being served as an individual defendant as complaint and summons only named corporation as defendant].) Mitchell acknowledges Barab was not a defendant or respondent in the summons or the petition. Thus,

## DISPOSITION

The judgment is affirmed. Each party to bear its own costs on appeal.

BIGELOW, P. J.

We concur:

STRATTON, J.

WILEY, J.

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as in *Cory*, it is clear the LLCs reasonably knew the summons and petition were directed to them rather than to Barab.